

COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 19 1999

In the Matter of)
)
1998 Biennial Regulatory Review --)
Streamlining of Mass Media)
Applications, Rules, and Processes)
)
Policies and Rules Regarding)
Minority and Female Ownership of)
Mass Media Facilities)

MM Docket No. 98-43

MM Docket No. 94-149

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Petition For Reconsideration

Clinton County Broadcasting, Inc. ("CCB"), permittee of WCXO(FM), Carlyle, Illinois, by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby petitions for reconsideration of the Commission's Report and Order, FCC 98-281, released November 25, 1998 in the above-captioned proceeding.¹

In its Report and Order, the Commission, inter alia, amended Section 73.3598 of its rules to increase to three years the time permitted for completion of construction of new or changed radio and television broadcast station facilities and to modify the procedures for obtaining extensions of construction permits for such facilities. As discussed below, CCB submits that the Commission on reconsideration should clarify that it will not apply the new

¹ The Commission's Report and Order was published in the Federal Register on December 18, 1998. 63 Fed. Reg. 70040. Accordingly, this petition is timely filed pursuant to Sections
(Continued...)

rules and tolling standards in a manner that would effectively foreshorten the usable construction period for permittees who have relied upon the Commission's existing extension policies with respect to construction permits already outstanding at the time the Report and Order was adopted. The new tolling criteria should not be applied retroactively in a manner that would prejudice holders of existing permits who have reasonably relied upon the Commission's existing policies.

Rather, as was originally contemplated in the April 3, 1998 Notice of Proposed Rulemaking in this proceeding,² the Commission should continue to apply the extension policies previously in existence to outstanding permits, including in particular those that are already outside their initial 18 or 24-month construction periods. Alternatively, the Commission may wish to expand the range of acceptable "tolling" circumstances for existing permit-holders to cover matters that previously were deemed to justify extensions. In any event, the agency should make clear that it will retain the flexibility, on a case-by-case basis, to take into account unusual circumstances and the reasonable expectations of permit-holders who have relied upon the existing rules and extension policies in formulating their plans with respect to the schedule for construction of new or modified facilities.

As the Commission's records will reflect, the construction permit for WCXO, the first radio transmission service authorized to Carlyle, Illinois, was issued to CCB in September

(...Continued)
1.429(d) and 1.4(b) of the Commission's Rules.

² FCC 98-57, released April 3, 1998.

1994.³ Thereafter, CCB began preparations to construct the station as originally authorized. CCB placed orders for the necessary equipment and executed a lease for the transmitter site. Also, CCB commenced initial tower construction by pouring the foundations for the new structure.⁴ To complete construction, however, CCB required a variance from local zoning authorities. Unfortunately, the variance was denied.⁵

As a result of the loss of transmitter site, CCB filed an application for a minor modification to relocate the station. This application was granted on July 20, 1998.⁶ CCB has made substantial progress at the new site and is making diligent efforts to complete the station but, due to continuing circumstances beyond its control, CCB is filing today a further application for an extension of its construction permit (attached). In particular, CCB has received local zoning approval for station construction. Major system components have been delivered, including the antenna, remote control and emergency alert systems, and studio and production equipment. The building which will house the studio and transmitter is more than fifty percent complete. All remaining equipment to complete construction is on order. Also, two employees have been hired for the new station. However, erection of the tower has been delayed due to severe winter weather conditions in the Midwest.

The Commission previously determined that CCB's substantial progress and loss of transmitter site – a circumstance clearly beyond the control of the permittee – were sufficient

³ FCC File No. BPH-930607MG.

⁴ FCC File Nos. BMPH-960319JA; BMPH-961114JC.

⁵ FCC File No. BMPH-970710JA.

⁶ FCC File No. BMPH-971223IC.

under the existing “one-in-three” criteria to justify extensions of the WCXO construction permit.⁷ CCB is optimistic that conditions will improve to enable construction of the station to continue, but it cannot predict with certainty when the station can be completed. Accordingly, under the Commission’s rules and policies as now in effect, CCB has a reasonable expectation that its pending extension application will be granted, and that further extensions would be available in the event circumstances beyond CCB’s control prevent completion of WCXO.

Indeed, in its Notice of Proposed Rulemaking in this proceeding, the Commission acknowledged the difficulties involved in applying new rules on construction periods and extension policies to construction permits that had been issued under the Commission’s previous policies, and particularly those that are already beyond their initial construction periods. The FCC proposed to extend permits still within their initial terms to the full three-year period now contemplated, and to apply the new rules regarding extensions to such permits. The Commission invited comment, however, on how to implement its proposal and “whether implementation would cause unjustifiable hardships to permittees or would result in a disservice to the public.”⁸ Further, the Commission tentatively concluded that it would be “administratively unworkable to apply the proposed rules to construction permits that are already beyond their initial construction periods (whether through extension, assignment, transfer of control, or modification)” and proposed, instead, “to continue to apply the rules as they exist today to permits outside their initial periods.”⁹

⁷ See Report and Order at ¶ 77.

⁸ Notice of Proposed Rulemaking at ¶ 68.

⁹ Id.

In its Report and Order, with virtually no explanation, the Commission instead announced that its new policies would also apply to all permittees holding existing construction permits. As to permittees, such as CCB, that are now authorized to construct under an extension of their initial permits, the FCC stated that “[t]he current extension, as an outstanding permit, will be extended to three years from the initial grant of the construction permit.....”¹⁰ In addition, the permittee may request additional time based on the new tolling procedures adopted in the Report and Order.¹¹ However, “[n]o additional time will be granted when the permittee has had, in all, at least three unencumbered years to construct.”¹² The grounds for tolling the three-year construction period generally are limited to “acts of God” or the pendency of certain types of administrative or judicial review. Seeking zoning approval and securing access to alternative transmitter sites in the event of zoning denials would not apparently toll the construction period under the new rules, even though the Commission historically has determined such events to be outside the permittee’s control.¹³

If strictly construed, the rules and policies announced in the Report and Order could have the effect of limiting CCB to a period of just a few more months in which to complete construction -- even though CCB has made substantial investments in constructing the station, and has attempted diligently to overcome obstacles beyond its control. The public interest

¹⁰ Report and Order at ¶ 89.

¹¹ Id.

¹² Id.

¹³ See id at ¶ ¶ 80, 84, 86.

clearly would not be served by arbitrarily limiting CCB to a predetermined period of time to complete construction, despite its ongoing efforts.

Instead, CCB submits that the Commission on reconsideration should, at a minimum, grant a holder of an outstanding construction permit – such as for WCXO – which predates the FCC's Report and Order, three years to complete construction from the date the permittee received a modified permit specifying a new transmitter site following loss of access to the original location due to circumstances beyond its control. Alternatively, the Commission should confirm that it will retain the discretion, on a case-by-case basis, to issue extensions beyond a total of three years to permittees who have reasonably relied upon the Commission's previous policies relating to extensions of the permissible period of construction in determining their schedules for commencement and completion of construction of new or modified facilities. By doing so, the Commission can avoid inequity in the implementation of new rules of which such permittees had no adequate notice prior to the commencement of this proceeding, and enable permittees who have relied upon Commission policies heretofore in effect to complete construction in an orderly fashion.

Respectfully submitted,

CLINTON COUNTY BROADCASTING, INC.

By:


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of

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(202) 719-7000

Its Attorneys

January 19, 1999

FOR
FCC
USE
ONLY

FCC 307

**APPLICATION FOR EXTENSION OF BROADCAST
CONSTRUCTION PERMIT OR TO REPLACE EXPIRED
CONSTRUCTION PERMIT**

FOR COMMISSION USE ONLY

FILE NO.

(CAREFULLY READ INSTRUCTIONS BEFORE FILLING OUT THIS FORM)

1. APPLICANT NAME (Last, First, Middle Initial) Clinton County Broadcasting, Inc.		
MAILING ADDRESS (Line 1) (Maximum 33 characters) 232 E. Broadway		INTERNET ADDRESS
CITY Centralia	STATE OR COUNTRY (if foreign address) Illinois	ZIP CODE 62801
TELEPHONE NUMBER (include area code) (618) 532-5604	CALL LETTERS OR OTHER FCC IDENTIFIER (IF APPLICABLE) WCXO	
2. Is a fee submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, complete FCC Form 159 (FCC Remittance Advice) If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114). <input type="checkbox"/> Governmental Entity <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Other (Please explain):		

3. IDENTIFICATION OF CONSTRUCTION PERMIT FOR WHICH AN EXTENSION/REPLACEMENT IS SOUGHT			
Legal name of Licensee/Permittee Clinton County Broadcasting, Inc.		<input checked="" type="checkbox"/> Main Transmitter <input type="checkbox"/> Auxiliary Transmitter	
Original File Number of Outstanding Construction Permit BMPH-971223 IC	Call Sign WCXO	This construction permit is for (check one): <input type="checkbox"/> Modification of licensed facilities <input checked="" type="checkbox"/> A new unbuilt station	
Frequency 96.7 MHz	Channel No. 244	Community of License Carlyle	State IL

4. Are the representations, including financial and site availability certifications, legal qualifications and environmental, contained in the initial application for construction permit still true and correct?

☒ Yes ☐ No

If No, provide details.

Exhibit No.

5. If there are pending applications concerning the station (e.g., major or minor modifications, assignments, etc.) provide a list of the relevant file numbers.

Exhibit No.

none

SEE INSTRUCTION "E" BEFORE COMPLETING QUESTIONS 6-10.

6. IDENTIFICATION OF THE MOST RECENT CONSTRUCTION PERIOD.

a. On what date does/did the subject construction permit most recently expire?

January 20, 1999

b. What was the grant date of the most recent authorization that led to the most recent expiration?

July 20, 1998

c. If the subject permit has expired, provide an explanation for the failure to file a timely extension application.

Exhibit No.

7. Was construction completed during the *most recent construction period*?

☐ Yes ☒ No

a. If Yes, on what date was construction completed?

b. If Yes, and an application for a License to Cover (see 47 C.F.R. Section 73.3536) has not been filed provide details.

Exhibit No.

8. Was substantial progress made during the *most recent construction period*?

☒ Yes ☐ No

If Yes, provide details.

Exhibit No.

9. Was construction delayed by circumstances that occurred during the *most recent construction period* which were clearly beyond the permittee's control?

☒ Yes ☒ No

a. If Yes, provide details of the circumstances which were clearly beyond the permittee's control.

Exhibit No.

1

b. If Yes, provide details of the permittee's diligent efforts to overcome such circumstances.

Exhibit No.

1

10. Since the filing of the applicant's last application, has an adverse finding been made or final action been taken by any court or administrative body with respect to the applicant or parties to the applicant in a civil or criminal proceeding, brought under the provisions of any law relating to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☒ No

If the answer is Yes, provide a full disclosure concerning the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of the filing; and (ii) the disposition of the previously reported matter.

Exhibit No.

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

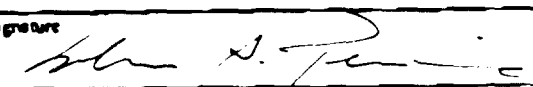
The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATION

11. By checking Yes, the applicant certifies, that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

☒ Yes ☐ No

12. I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name Clinton County Broadcasting, Inc.	Signature 
Title President	Date 1/15/99

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503)

EXHIBIT 1

Clinton County Broadcasting, Inc. ("CCB"), permittee of a new FM station to serve Carlyle, Illinois, requests that construction permit No. BMPH-971223IC be extended for at least six months.

CCB submits that substantial progress has been made toward constructing the station but, due to circumstances beyond the permittee's control, additional time is needed to complete the new station. As previously reported, CCB promptly began preparations for construction of the station as originally authorized in File No. BPH-930607MG. CCB also requested a variance from the local zoning authority to construct the new antenna tower at the height approved by the Commission. After the tower bases were prepared, however, the zoning board denied CCB's request for a variance. As a result of the loss of transmitter site, CCB was required to file an application to specify a new location, which the Commission granted on July 20, 1998. *See* FCC File No. BMPH-971223IC.

CCB has made substantial progress toward completing construction at the new authorized site. Specifically, CCB has received local zoning approval for station construction. Major system components for the station have been delivered, including the antenna, remote control and emergency alert systems, and studio and production equipment. The building which will house the studio and transmitter is more than fifty percent complete, and work at the site is on-going. All remaining equipment necessary to complete construction is currently on order. Also, two employees have been hired for the new station. Erection of the tower, however, has been delayed due to severe winter

weather conditions in the Midwest. Thus, upon grant of this application to extend the construction permit for WCXO and the return of favorable conditions, CCB will be able promptly to initiate the first FM broadcast service allocated to Carlyle.

On the basis of the foregoing, CCB respectfully requests that permit No. BPH-930607MG be extended for at least six months.